



## FEE COLLECTION PROCEDURES LAW



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## REVENUE AND TAXATION CODE PROVISIONS

## Relating to the Fee Collection Procedures Law \*

## (Part 30. Division 2)

- Chapter 1. General Provisions and Definitions. §§ 55001-55004.
2. Fee. §§ 55021-55022.
  3. Determinations. §§ 55040-55103.
  4. Collection of Fee. §§ 55121-55209.5.
  5. Overpayments and Refunds. §§ 55221-55281.
  6. Administration and Taxpayers' Bill of Rights. §§ 55301-55337.
  7. Violations. §§ 55361-55365.
  8. Disclosure of Information. § 55381.

## CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

- § 55001. Title.
- § 55002. "Person".
- § 55003. "Board".
- § 55004. "Feepayer".

**55001. Title.** This chapter shall be known and may be cited as the Fee Collection Procedures Law.

**55002. "Person."** "Person" means an individual, trust firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership, limited liability company and association. "Person" also includes any city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

History.—Stats. 1994, Ch. 1200 (SB 469), in effect September 30, 1994, added "limited liability company" after "partnership," in the first sentence.

**55003. "Board."** "Board" means the State Board of Equalization.

**55004. "Feepayer."** "Feepayer" means any person liable for the payment of the fees collected pursuant to this part.

## CHAPTER 2. FEE

- § 55021. Requirement to register with Board; registration of feepayer.
- § 55022. Security.

**55021. Requirement to register with Board; registration of feepayer.** Every person who owes a fee which is subject to this part shall register with the board.

**55022. Security.** The board, whenever it deems necessary to ensure compliance with this part, may require any person subject to this part to place with it any security that the board determines to be reasonable, taking into account the circumstances of that person. The board may sell the security at public auction if it becomes necessary to do so in order to recover any fee or any amount required to be collected, including any interest or penalty due. Notice of the sale shall be served upon the person who placed the security personally or by mail.

\* Stats. 1992, Ch. 407 (SB 1920), effective January 1, 1993.

If service is made by mail, the notice shall be addressed to the person at his or her address as it appears in the records of the board. Service shall be made at least 30 days prior to the sale in the case of personal service, and at least 40 days prior to the sale in the case of service by mail. Upon any sale, any surplus above the amounts due shall be returned to the person who placed the security.

**History.**—Stats. 1994, Ch. 903 (SB 1733), in effect January 1, 1995, deleted the third sentence of the second paragraph which read: "Security in the form of a bearer bond issued by the United States or the State of California which has a prevailing market price may, however, be sold at private sale at a price not lower than the prevailing market price thereof."

### CHAPTER 3. DETERMINATIONS

- Article 1. Returns and Payments. §§ 55040–55046.5.
- 1.1. Payment by Electronic Funds Transfer. §§ 55050–55053.
  2. Deficiency Determinations. §§ 55061–55064.
  3. Redeterminations. §§ 55081–55087.
  4. Jeopardy Determinations. §§ 55101–55103.

#### Article 1. Returns and Payments

- § 55040. Electronic filing.
- § 55041. Extension of time.
- § 55042. Penalties.
- § 55043. Interest rates. [Repealed.]
- § 55044. Relief of penalty; excusable delay.
- § 55045. Relief of fee, penalty, or interest due to reliance on advice from the Board.
- § 55046. Relief of interest.
- § 55046.5. Disaster.

**55040. Electronic filing.** A feepayer shall file a return in the form as prescribed by the board, which may include, but not be limited to, electronic media. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

**History.**—Added by Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003.

**55041. Extension of time.** The board for good cause may extend, for not to exceed one month, the time for making any return or paying any amount required to be paid under this part. The extension may be granted at any time if a request therefor is filed with the board within or prior to the period for which the extension may be granted.

Any person to whom an extension is granted shall pay, in addition to the fee, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5 from the date on which the fee would have been due without the extension until the date of payment.

**55042. Penalties.** (a) Any person who fails to pay any fee, except fees determined by the board under Article 2 (commencing with Section 55061), within the time required shall pay a penalty of 10 percent of the amount of the fee, together with interest on that fee at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee became due and payable until the date of payment.



(b) Any person who fails to file a return within the time prescribed for filing the return shall pay a penalty of 10 percent of the amount of the fee with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the fee for which the return is required for any one return.

History.—Stats. 2000, Ch. 923 (AB 2894), effective January 1, 2001, deleted “If the fee . . . of the delinquency” of first sentence, added subdivision (a), (b) and (c).

**55043. Interest rates.** [Repealed by Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001.]

**55044. Relief of penalty; excusable delay.** (a) If the board finds that a person’s failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person’s control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 55042, 55050, and 55086.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

History.—Stats. 2000, Ch. 1052 (AB 2898), effective January 1, 2001, renumbered first sentence as subdivision (a), renumbered second sentence as subdivision (b), substituted “55042, 55050, and 55086” for “55042 and 55086”, added “Except as provided in subdivision (c)” to subdivision (b), added subdivision (c).

**55045. Relief of fee, penalty, or interest due to reliance on advice from the Board.** (a) If the board finds that a person’s failure to make a timely report or payment is due to the person’s reasonable reliance on written advice from the board, the person may be relieved of the fees imposed or administered under this part and any penalty or interest added thereto.

(b) For purposes of this section, a person’s failure to make a timely report or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to the fee under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to the fee, or stating the conditions under which the activity or transaction is subject to the fee.

(3) The liability for fees applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

**55046. Relief of interest.** (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the fee payer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on fee liabilities that arise during taxable periods commencing on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2000, Ch. 923 (AB 2894), effective January 1, 2001, deleted "or" after "not made timely," in subdivision (a). Stats. 2001, Ch. 251 (AB 1123), substituted "this part" for "Section 55043 and . . . made timely, or" in subdivision (a), effective January 1, 2002.

**55046.5. Disaster.** If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of interest provided by Sections 55041, 55042, 55050, and 55061.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

History.—Added by Stats. 2002, Ch. 152 (AB 1458), in effect January 1, 2003.

#### Article 1.1. Payment by Electronic Funds Transfer

- § 55050. Electronic funds transfer payments.
- § 55051. Relief of penalty.
- § 55052. Definitions.
- § 55053. Electronic filing.

**55050. Electronic funds transfer payments.** (a) Any person whose estimated fee liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to

methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated fee liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates prescribed for the payment of the fee. Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting fees by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of fees, exclusive of prepayments, with respect to the period for which the return is required.

(e) Any person required to remit fees pursuant to this article who remits those fees by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the fees incorrectly remitted.

(f) Any person who fails to pay any fee to the state or any amount of fee required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 55061) within the time required shall pay a penalty of 10 percent of the fee or amount of fee, in addition to the fee or amount of fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee or the amount of fee required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated fee liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the fees due, exclusive of prepayments, for any one return. Any person remitting fees by electronic funds transfer shall be subject to the penalties under this section and not Section 55042.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

History.—Added by Stats. 2000, Ch. 923 (AB 2894), effective January 1, 2001.

**55051. Relief of penalty.** If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with

board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 55050. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

**History.**—Added by Stats. 2000, Ch. 923 (AB 2894), effective January 1, 2001.

**55052. Definitions.** (a) “Electronic funds transfer” means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) “Automated clearinghouse” means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) “Automated clearinghouse debit” means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of the fee. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) “Automated clearinghouse credit” means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) “Fedwire transfer” means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Section 55050 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

**History.**—Added by Stats. 2000, Ch. 923 (AB 2894), effective January 1, 2001.

**55053. Electronic filing.** (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

*History.—Added by Stats. 2001, Ch. 543 (SB 1185), effective January 1, 2002.*

## Article 2. Deficiency Determinations

- § 55061. Deficiency determinations; interest; penalty; notice of deficiency determination.
- § 55062. Limitations; deficiency determinations.
- § 55063. Limitations; deficiency determinations; decedents.
- § 55064. Waiver.

**55061. Deficiency determinations; interest; penalty; notice of deficiency determination.** (a) If the board is dissatisfied with the return filed or the amount of the fee paid to the state by any feepayer, or if no return has been filed or no payment of the fee has been made to the state by a feepayer, the board may compute and determine the amount to be paid, based upon any information available to it. One or more additional determinations may be made of the amount of the fee due for one, or for more than one period. The amount of the fee so determined shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the amount of the fee, or any portion thereof, became due and payable until the date of payment. In making a determination, the board may offset overpayments for a period or periods against underpayments for another period or periods and against the interest and penalties on the underpayments.

(b) If any part of the deficiency for which a determination of an additional amount due is made is found to have been occasioned by negligence or intentional disregard of this part or authorized regulations, a penalty of 10 percent of the amount of the determination shall be added, plus interest as provided in subdivision (a).

(c) If any part of the deficiency for which a determination of an additional amount due is found to be occasioned by fraud or an intent to evade this part or authorized regulations, a penalty of 25 percent of the amount of the determination shall be added, plus interest as provided in subdivision (a).

(d) The board shall give to the feepayer written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the feepayer at his or her address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in a United States Post Office, or a mailbox,

sub-post office, substation or mail chute, or other facility regularly maintained or provided by the United States Postal Service without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served, and service shall be deemed complete at the time of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

**55062. Limitations; deficiency determinations.** Except in the case of fraud, intent to evade this part, authorized rules and regulations, or failure to make a return, every notice of a determination of an additional amount due shall be given within three years after the date when the amount should have been paid or the return was due, or within three years after the return was filed, whichever period expires later. In the case of failure to make a return, the notice of determination shall be mailed within eight years after the date the return was due.

History.—Ch. 1113, Stats. 1993, in effect January 1, 1994, added “or the return . . . expires later” after “have been paid” in the first sentence.

**55063. Limitations; deficiency determinations; decedents.** In the case of a deficiency arising under this part during the lifetime of a decedent, a notice of deficiency determination shall be mailed within four months after written request therefor, in the form required by the board, by the fiduciary of the estate or trust or by any other person liable for the fee or any portion thereof.

**55064. Waiver.** If before the expiration of the time prescribed in Section 55062 for the mailing of a notice of deficiency determination the feepayer has consented in writing to the mailing of the notice after that time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

### Article 3. Redeterminations

- § 55081. Petition for redetermination.
- § 55082. Form and content of petition.
- § 55083. Oral hearing.
- § 55084. Decrease or increase of determinations.
- § 55085. Finality date of order or decision.
- § 55086. Due date of determination; penalty.
- § 55087. Service of notice.

**55081. Petition for redetermination.** Any person from whom an amount is determined to be due under Article 2 (commencing with Section 55061), or any person directly interested, may petition for a redetermination thereof within 30 days after service upon him or her of notice of the determination. If a petition for redetermination is not filed within the 30-day period, the amount determined to be due becomes final at the expiration thereof.

**55082. Form and content of petition.** Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to the date on which the board issues its order or decision upon the petition for redetermination.

**55083. Oral hearing.** If a petition for redetermination is filed within the 30-day period, the board shall reconsider the amount determined to be due, and if the person has so requested in his or her petition, the board shall grant him or her an oral hearing and shall give him or her 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

**55084. Decrease or increase of determinations.** The board may decrease or increase the amount of the determination before it become final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the 25-percent penalty imposed by subdivision (c) of Section 55061 applies to the amount of the determination as originally made or as increased, the claim for increase must be asserted within eight years after the date the return for the period for which the increase is asserted was due.

**55085. Finality date of order or decision.** The order or decision of the board upon a petition for redetermination shall become final 30 days after service upon the petitioner of notice thereof.

**55086. Due date of determination; penalty.** All amounts determined to be due by the board under Article 2 (commencing with Section 55061) are due and payable at the time they become final, and if not paid when due and payable, a penalty of 10 percent of the amount determined to be due shall be added to the amount due and payable.

**55087. Service of notice.** Any notice required by this article shall be served personally or by mail in the same manner as prescribed for service of notice by subdivision (d) of Section 55061.

#### Article 4. Jeopardy Determinations

- § 55101. Jeopardy determinations; interest and penalty.
- § 55102. Petition for redetermination; security.
- § 55103. Administrative hearing.

**55101. Jeopardy determinations; interest and penalty.** If the board believes that the collection of any amount of the fee will be jeopardized by delay, it shall thereupon make a determination of the amount of the fee due, noting that fact upon the determination, and the amount of the fee shall be immediately due and payable. If the amount of the fee, interest, and penalty specified in the jeopardy determination is not paid, or a petition for



redetermination is not filed, within 10 days after the service upon the feepayer of notice of determination, the determination becomes final, and the delinquency penalty and interest provided in Sections 55042 and 55043 shall be attached to the amount of the fee specified therein.

**55102. Petition for redetermination; security.** The feepayer against whom a jeopardy determination is made may file a petition for redetermination thereof, pursuant to Article 3 (commencing with Section 55081), with the board within 10 days after the service upon the feepayer of notice of the determination, but he or she shall, within the 10-day period, deposit with the board any security that it deems necessary to ensure compliance with the provisions of this part. The security may be sold by the board at public sale if it becomes necessary to do so in order to recover any amount due under this part. Notice of the sale may be served upon the person who deposited the security personally or by mail in the same manner as prescribed for service of notice by Section 55061. Upon any such sale, the surplus, if any, above the amount due under this part shall be returned to the person who deposited the security.

**55103. Administrative hearing.** In accordance with any rules and regulations that the board may prescribe, the person against whom a jeopardy determination is made may apply for an administrative hearing for one or more of the following purposes:

- (a) To establish that the determination is excessive.
- (b) To establish that the sale of property that may be seized after issuance of the jeopardy determination, or any part thereof, shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.
- (c) To request the release of all or a part of the property to the person.
- (d) To request a stay of collection activities.

The application shall be filed within 30 days after service of the notice of jeopardy determination and shall be in writing and state the specific factual legal grounds upon which it is founded. The person shall not be required to post any security in order to file the application and to obtain the hearing. However, if the person does not deposit, within the 10-day period prescribed in Section 55102, the security that the board deems necessary to ensure compliance with this part, the filing of the application shall not operate as a stay of collection activities, except the sale of property seized after issuance of the jeopardy determination. Upon a showing of good cause for failure to file a timely application for an administrative hearing, the board may allow a filing of the application and grant the person an administrative hearing. The filing of an application pursuant to this section shall not affect the provisions of Section 55101 relating to the finality date of the determination or to penalty and interest.



## CHAPTER 4. COLLECTION OF FEE

- Article 1. Suit for Fee. §§ 55121-55122.  
2. Judgment for Fee. §§ 55141-55142.  
3. Warrant for Collection. §§ 55161-55163.  
4. Seizure and Sale. §§ 55181-55184.  
5. Miscellaneous. §§ 55201-55209.5.

## Article 1. Suit for Fee

- § 55121. Legal actions to collect deficiencies.  
§ 55122. Certificate of deficiency; writ of attachment.

**55121. Legal actions to collect deficiencies.** The board may bring any legal action that is necessary to collect any deficiency in the fee required to be paid, and upon the board's request, the Attorney General shall bring the action.

**55122. Certificate of deficiency; writ of attachment.** In any suit brought to enforce the rights of the state with respect to the fee, a certificate by the board showing the delinquency shall be prima facie evidence of the levy of the fee, the delinquency of the amount of the fee, interest, and penalty set forth therein, and compliance by the board with all provisions of this part in relation to the computation and levy of the fee. In the action, a writ of attachment may be issued in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure.

## Article 2. Judgment for Fee

- § 55141. Liens; perfection and enforceability of.  
§ 55142. Release of liens.

**55141. Liens; perfection and enforceability of.** (a) If any person fails to pay any amount imposed pursuant to this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien. Such a lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are "due and payable" on the following dates:

(1) For amounts disclosed on a return received by the board before the date the return is delinquent, the date the return would have been delinquent.

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the board.

(3) For amounts determined under Section 55101, the date the notice of the board's finding is mailed or issued.

(4) For all other amounts, the date the assessment is final.

**55142. Release of liens.** (a) If the board determines that the amount of the fee, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien imposed under this article will not jeopardize the collection of the amount of the fee, interest, and

penalties, the board may at any time release all or any portion of the property subject to the lien from the lien or may subordinate the lien to other liens and encumbrances.

(b) If the board finds that the liability represented by the lien imposed under this article, including any interest accrued thereon, is legally unenforceable, the board may release the lien.

(c) A certificate by the board to the effect that any property has been released from a lien or that the lien has been subordinated to other liens and encumbrances, is conclusive evidence that the property has been released or that the lien has been subordinated as provided in the certificate.

### Article 3. Warrant for Collection

- § 55161. Warrant; time of issuing.
- § 55162. Fees and expenses.
- § 55163. Collection of fees.

**55161. Warrant; time of issuing.** At any time within three years after any person is delinquent in the payment of any amount herein required to be paid, or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board, or its authorized representative, may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff or marshal and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the manner and with the same effect as a levy of, and sale pursuant to, a writ of execution.

History.—Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal, or constable” after “to any sheriff” in the second sentence.

**55162. Fees and expenses.** The board may pay or advance to the sheriff or marshal, the same fees, commissions, and expenses for their services as are provided by law for similar services pursuant to writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

History.—Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal, or constable” after “to the sheriff” in the first sentence.

**55163. Collection of fees.** The fees, commissions, and expenses are the obligation of the person required to pay any amount under this part and may be collected from him or her by virtue of the warrant or in any other manner provided in this part for the collection of the fee.

### Article 4. Seizure and Sale

- § 55181. Seizure and sale.
- § 55182. Notice of sale.
- § 55183. Bill of sale; deed.
- § 55184. Disposition of proceeds.

**55181. Seizure and sale.** Whenever any feepayer is delinquent in the payment of the fee, the board, or its authorized representative, may seize any property, real or personal, of the feepayer, and sell at public auction the

property seized, or a sufficient portion thereof, to pay the fee due, together with any penalties imposed for the delinquency and all costs that have been incurred on account of the seizure and sale.

**55182. Notice of sale.** Notice of the sale, and the time and place thereof, shall be given to the delinquent feepayer and to all persons who have an interest of record in the property at least 20 days before the date set for the sale in the following manner:

The notice shall be personally served or enclosed in an envelope addressed to the feepayer or other person at his or her last known residence or place of business in this state as it appears upon the records of the board, if any, and deposited in the United States registered mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property thereof is located.

Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest to the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount due, including the fee, interest, penalties, and costs, the name of the feepayer, and the further statement that unless the amount due is paid on or before the time fixed in the notice of the sale, the property, or so much thereof as may be necessary, will be sold in accordance with law and notice.

**55183. Bill of sale; deed.** At the sale, the property shall be sold by the board, or by its authorized agent, in accordance with law and notice, and the board shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the feepayer.

**55184. Disposition of proceeds.** If, after the sale, the money received exceeds the amount of all fees, penalties, and costs due the state from the feepayer, the board shall return the excess to him or her and obtain his or her receipt. If any persons having an interest in or lien upon the property files with the board prior to the sale notice of his or her interest, the board shall withhold any excess pending a determination of the rights of the respective parties to the excess moneys by a court of competent jurisdiction. If the receipt of the feepayer is not available, the board shall deposit the excess

moneys with the Controller, as trustee for the owner, subject to the order of the feepayer, his or her heirs, successors, or assigns.

**History.**—Stats. 1996, Ch. 860 (AB 2260), in effect January 1, 1997, substituted “to the excess moneys” for “thereto” after “the respective parties” in the second sentence and substituted “Controller” for “Treasurer” after “moneys with the” in the last sentence.

## Article 5. Miscellaneous

- § 55201. Notice to creditors.
- § 55202. Withholds; prohibitions against transfer or disposal.
- § 55203. Withholds; banks.
- § 55204. Withholds; liability.
- § 55205. Notice of levy.
- § 55205.5. Employer withheld earnings.
- § 55206. Remedies; cumulative.
- § 55207. Remedies.
- § 55208. Furnishing of partnership agreement.
- § 55209. Installment payment agreement.
- § 55209.5. Installment payment agreement; annual statement.

**55201. Notice to creditors.** If any feepayer is delinquent in the payment of any obligation imposed by this part, or if any determination has been made against a feepayer which remains unpaid, the board may, not later than three years after the payment becomes delinquent, or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof, personally or by first-class mail, to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the feepayer, or owing any debts to the feepayer. In the case of any state officer, department, or agency, the notice shall be given to the officer, department, or agency prior to the time it presents the claim of the delinquent feepayer to the Controller.

**55202. Withholds; prohibitions against transfer or disposal.** After receiving the notice, the persons so notified shall not transfer or make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the board consents to a transfer or disposition or until 60 days after the receipt of the notice, whichever occurs first.

**55203. Withholds; banks.** All persons so notified shall immediately, after receipt of the notice, advise the board of all credits, other personal property, or debts in their possession, or under their control, or owing by them. If the notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice, to be effective, shall state the amount, interest, and penalty due from the person and shall be delivered or mailed to the branch or office of the bank at which the deposit is carried or mailed to the branch or office of the bank at which the deposit is carried or at which the credits or personal property is held. Notwithstanding any other provision of law, with respect to a deposit in a bank or other credits or personal property

in the possession or under the control of a bank, the notice shall only be effective with respect to an amount not in excess of the amount, interest, and penalty due from the person.

55204. **Withholds; liability.** If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld, to the extent of the value of the property or the amount of the debts thus transferred or paid, he or she shall be liable to the state for any indebtedness due under this part from the person with respect to whose obligation the notice was given, if solely by reason of that transfer or disposition, the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

*Text of section operative through June 30, 2001*

55205. **Notice of levy.** (a) The board may, by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to the fee payer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of the fee, interest, or penalties due from the fee payer or other person, or the amount of any liability incurred under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(c) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the fee payer or other person liable for the fee.

(3) Any other payments or credits due or becoming due the fee payer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(d) In the case of a financial institution, to be effective, the notice shall state the amount due from the feepayer and shall be delivered or mailed to the branch office of the financial institution where the credits or other property are held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, added subdivision designation “(a)” to the first paragraph and “(d)” to the second paragraph, substituted “payments, credits other than payments,” after “their control, any” in the first sentence, and added “The notice of . . . in subdivision (b).” as the second sentence in subdivision (a), and added subdivisions (b) and (c).

*Text of section operative July 1, 2001*

55205. **Notice of levy.** (a) The board may, by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to the feepayer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of the fee, interest, or penalties due from the feepayer or other person, or the amount of any liability incurred under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person’s possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(c) For the purposes of this section, the term “payments” does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term “payments” does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the feepayer or other person liable for the fee.

(3) Any other payments or credits due or becoming due the feepayer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(d) In the case of a financial institution, to be effective, the notice shall state the amount due from the feepayer and shall be delivered or mailed to the branch office of the financial institution where the credits or other property are held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, added subdivision designation “(a)” to the first paragraph and “(d)” to the second paragraph, substituted “payments, credits other than payments,” after “their control, any” in the first sentence, and added “The notice of . . . in subdivision (b).” as the second sentence in subdivision (a), and added subdivisions (b) and (c). Stats. 1999, Ch. 991 (SB 45), in effect January 1, 2000, but operative July 1, 2001, substituted “paragraph (29) of subdivision (c) of Section 9102” for “Section 9105” after “as defined in” in subdivision (d).

**55205.5. Employer withheld earnings.** (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a fee payer or other person liable for any amount under this part that the person’s employer withheld earnings for taxes pursuant to Section 55205 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board’s determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person’s account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person’s account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person’s account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.



(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

*History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.*

**55206. Remedies; cumulative.** The remedies of the state provided for in this chapter are cumulative, and no action taken by the board or by the Attorney General constitutes an election by the state or any of its officers to pursue any remedy to the exclusion of any other remedy for which provision is made in this part.

**55207. Remedies.** The amounts required to be paid by any person under this part, together with interest and penalties, shall be satisfied first in any of the following cases:

(a) Whenever the person is insolvent.

(b) Whenever the person makes a voluntary assignment of his or her assets.

(c) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all debts due from the deceased.

(d) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this part are levied upon by process of law.

This section does not give the state a preference over a lien or security interest which was recorded or perfected prior to the time when the state records or files its lien, as provided in Section 7171 of the Government Code.

The preference given to the state by this section is subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure.

**55208. Furnishing of partnership agreement.** The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

*History.—Added by Stats. 1996, Ch. 1003 (AB 583), in effect January 1, 1997.*

**55209. Installment payment agreement.** (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any fees due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the fee payer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment



agreement shall be void, and the total amount of the fees, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of fees, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the fee to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 55086.

*History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2000, Ch. 1052 (AB 2898), effective January 1, 2001, added subdivision (e).*

**55209.5. Installment payment agreement; annual statement.** The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 55209 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

*History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.*

## CHAPTER 5. OVERPAYMENTS AND REFUNDS

- |            |                               |                 |
|------------|-------------------------------|-----------------|
| Article 1. | Claim for Refund.             | §§ 55221–55226. |
| 2.         | Suit for Refund.              | §§ 55242–55248. |
| 3.         | Recover of Erroneous Refunds. | §§ 55261–55263. |
| 4.         | Cancellations.                | § 55281.        |

### Article 1. Claim for Refund

- |            |   |
|------------|---|
| § 55221.   | Credits and refunds.  |
| § 55221.5. | Excess fee reimbursement.                                     |
| § 55222.   | Claim; limitation periods.                                    |
| § 55222.1. | Claim limitation period; financially disabled.                |
| § 55223.   | Effects of failure to file claim.                             |
| § 55224.   | Notice of action on claim.                                    |
| § 55225.   | Interest on overpayments.                                     |
| § 55226.   | Interest disallowed for intentional or careless overpayments. |

**55221. Credits and refunds.** (a) If the board determines that any amount of the fee, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in its records and certify the amount collected in excess of what was legally due and the person from whom it was collected or by whom paid. The excess amount collected or paid shall be credited on any amounts then due from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors.

(b) Any proposed determination by the board that is in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

*History.*—Stats. 1995, Ch. 555, in effect January 1, 1996, added subdivision letter (a), substituted “its records and certify” for “the records of the board and shall certify to the State Board of Control” after “that fact in” in the first sentence of, and substituted “The” for “If approved by the State Board of Control, the” before “excess amount collected” in the second sentence of, subdivision (a); completely rewrote the second paragraph which previously set a maximum threshold of \$50,000 for which the board would not have to obtain the approval of the State Board of Control; and added subdivision (b).

**55221.5. Excess fee reimbursement.** When an amount represented by a feepayer subject to this part to a customer as constituting reimbursement for fees subject to this part is computed upon an amount that is not taxable or is in excess of the fee amount and is actually paid by the customer to the feepayer, the amount so paid shall be returned by the feepayer to the customer upon notification by the State Board of Equalization or the customer that the excess has been ascertained. If the feepayer fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the feepayer upon an amount that is not subject to the fee or is in excess of the fee amount, shall be remitted by that feepayer to this state. Those amounts remitted to the state by the feepayer shall be credited by the board on any amounts due and payable from the feepayer which are subject to this part and are based on the same activity, and the balance, if any, shall constitute an obligation due from the feepayer to this state.

*History.*—Added by Stats. 1996, Ch. 1087, in effect January 1, 1997.

**55222. Claim; limitation periods.** (a) Except as provided in subdivision (b), no refund shall be approved by the board after three years from the due date of the payment for the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 55061) of Chapter 3, after six months from the date the determinations have become final, or six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period, unless a claim for credit is filed with the board within that period or unless the credit relates to a period for which a waiver is given pursuant to Section 55064.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 55064 if a claim therefor is filed with the board before the expiration of the period agreed upon.

(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

*History.*—Stats. 2001, Ch. 543 (SB 1185), substituted “after” for “within” and “from the date” for “after” in subdivision (a), effective January 1, 2002.

**55222.1. Claim limitation period; financially disabled.** (a) The limitation period specified in Section 55222 shall be suspended during any period of a person’s life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of

medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including *res judicata*, as of the effective date of the act adding this section.

**History.**—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

**55223. Effects of failure to file claim.** Failure to file a claim within the time prescribed in this article constitutes a waiver of all demands against the state on account of the overpayment.

**55224. Notice of action on claim.** Within 30 days after disallowing any claim, in whole or in part, the board shall serve written notice of its action on the claimant pursuant to Section 55061.

**55225. Interest on overpayments.** Interest shall be computed, allowed, and paid upon any overpayment of any amount of fee at the modified adjusted rate per month established pursuant to Section 6591.5, from the first day of the monthly period following the period during which the overpayment was made. For purposes of this section, "monthly period" means the period commencing on the day after the due date of the payment and continuing through the same date in the immediately following month. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the monthly period following the date upon which the claimant, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is earlier.

(b) In the case of a credit, to the same date as to that to which interest is computed on the fee or amount against which the credit is applied.

**History.**—Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted "monthly period following the period" for "calendar month following the month" after "day of the" in the first sentence of, added "For purposes of . . . immediately following month." as the second sentence of, the first paragraph and substituted "last day of the monthly period" for "15th day of the calendar month" after "refund, to the" in, and deleted "or the date upon which the claim is certified to the State Board of Control, whichever date is earlier" after "may be filed" in, subdivision (a). Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, added ", if he or she has not already filed a claim," after "which the claimant" and added "or the date . . . date is earlier" after "may be filed" in subdivision (a).

**55226. Interest disallowed for intentional or careless overpayments.** (a) If the board determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(b) If any person who has filed a claim for refund requests the board to defer action on the claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the person requests the board to defer action on the claim.

**History.**—Stats. 1998, Ch. 420 (SB 2230), in effect January 1, 1999, added subdivision designation “(a)” and added subdivision (b).

## Article 2. Suit for Refund

§ 55242.	Necessity of refund claim.
§ 55243.	Action for refund; Limitation.
§ 55244.	Effect of failure to timely mail notice of action.
§ 55245.	Effect of failure to timely bring suit.
§ 55246.	Disposition of amount of judgment.
§ 55247.	Interest allowed on judgment.
§ 55248.	Judgment for assignee forbidden.

**55242. Necessity of refund claim.** No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally assessed or collected unless a claim for refund or credit has been duly filed.

**55243. Action for refund; limitation.** Within 90 days after the mailing of the notice of the board’s action upon a claim for refund or credit, the claimant may bring an action against the board on the grounds set forth in the claim in a court of competent jurisdiction in the County of Sacramento for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

**55244. Effect of failure to timely mail notice of action.** If the board fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the board, consider the claim disallowed and bring an action against the board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

**55245. Effect of failure to timely bring suit.** Failure to bring suit or action within the time specified in this article constitutes a waiver of all demands against the state on account of any alleged overpayments.

**55246. Disposition of amount of judgment.** If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any fee due from the plaintiff, and the balance shall be refunded to the plaintiff.

**55247. Interest allowed on judgment.** In any judgment, interest shall be allowed at the modified adjusted rate per annum established for overpayments pursuant to Section 6591.5, upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

**55248. Judgment for assignee forbidden.** A judgment shall not be rendered in favor of the plaintiff in any action brought against the board to recover any fee paid when the action is brought by or in the name of an assignee of the feepayer paying the fee or by any person other than the person who has paid the fee.

As used in this section, “assignee” does not include a person who has acquired the business of the feepayer which gave rise to the fee and who is thereby a successor in interest to the feepayer.

### Article 3. Recover of Erroneous Refunds

- § 55261. Erroneous refunds; actions.
- § 55262. Place of trial.
- § 55262. Interest on erroneous refunds.
- § 55263. Rules of procedure.

**55261. Erroneous refunds; actions.** (a) The Controller may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 2 (commencing with Section 55061) or Article 4 (commencing with Section 55101) of Chapter 3. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller’s warrant or date of credit.

**History.**—Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, added subdivision designation “(a)”, substituted “that” for “which” after “or part thereof”, and deleted “, and the action shall be tried in the County of Sacramento unless the court, with the consent of the Attorney General, orders a change of place of trial. The Attorney General shall prosecute the action, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings” after “State of California” in subdivision (a), and added subdivision (b).

**Note.**—Sec. 61, of Stats. 1998, Ch. 609 (SB 2232), effective January 1, 1999, states: It is the intent of the Legislature in enacting those provisions of this act that allow the State Board of Equalization to recover refunds administratively that no increase in taxpayer costs result from taxpayer compliance with these provisions.

**55262. Place of trial.** In any action brought pursuant to subdivision (a) of Section 55261, the court may, with the consent of the Attorney General, order a change in the place of trial.

**History.**—Added by Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999.

**55262. Interest on erroneous refunds.** (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of fees nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 55261, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 55261 on or after January 1, 2000.

**History.**—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

**55263. Rules of procedure.** The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 55263, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

**History.**—Added by Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999.

## Article 4. Cancellations

### § 55281. Cancellation of determinations.

**55281. Cancellation of determinations.** (a) If any amount has been illegally determined, either by the person filing the return or by the board, the board shall certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made and authorize the cancellation of the amount upon the records of the board.

(b) Any proposed determination by the board that is in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

**History.**—Stats. 1995, Ch. 555, in effect January 1, 1996, added subdivision letter (a), deleted “in excess of fifty thousand dollars (\$50,000)” after “If any amount”, deleted “to the State Board of Control” after “board shall certify”, substituted “and” for “. If the State Board of Control approves, it shall” after “determination was made”, and deleted “If an amount not exceeding fifty thousand dollars (\$50,000) has been illegally determined, either by the person filing a return or by the board, the board, without certifying this fact to the State Board of Control, shall authorize the cancellation of the amount upon the records of the board.” as the third sentence, in subdivision (a); and added subdivision (b).

## CHAPTER 6. ADMINISTRATION AND TAXPAYERS’ BILL OF RIGHTS

Article 1. Administration. §§ 55301–55305.

2. The California Taxpayers’ Bill of Rights. §§ 55321–55337.

### Article 1. Administration

§ 55301. Enforcement by Board; rules and regulations.

§ 55302. Examination of records.

§ 55303. Employees and representatives of Board.

§ 55304. Certificate of notice.

§ 55305. Information confidential; tax preparer.

**55301. Enforcement by Board; rules and regulations.** The board shall enforce this part and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part.

**55302. Examination of records.** The board may make examinations of the books and records of any feepayer as it may deem necessary in carrying out this part.

**55303. Employees and representatives of Board.** The board may employ accountants, auditors, investigators, and other expert and clerical assistance necessary to enforce its powers and perform its duties under this part.

**55304. Certificate of notice.** A certificate by the board or an employee of the board stating that a notice required by this part was given by mailing or personal service shall be prima facie evidence in any

administrative or judicial proceeding of the fact and regularity of the mailing or personal service in accordance with any requirement of this part for the giving of a notice. Unless otherwise specifically required, any notice provided by this part to be mailed or served may be given either by mailing or by personal service in the manner provided for giving notice of a deficiency determination.

**55305. Information confidential; tax preparer.** (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 3 (commencing with Section 55041), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

*History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.*

## Article 2. The California Taxpayers' Bill of Rights

- § 55321. Administration.
- § 55322. Taxpayers' Rights Advocate.
- § 55323. Education and information program.
- § 55324. Annual hearing for taxpayers to propose law changes.
- § 55325. Preparation of statements by Board.
- § 55326. Limit on revenue collected or assessed.
- § 55327. Evaluation of employee's contact with taxpayers.
- § 55328. Plan to timely resolve claims and petitions.
- § 55329. Procedures related to protest hearings.
- § 55330. Reimbursement to taxpayer.
- § 55331. Investigation for nontax administration purposes.
- § 55332. Settlement of disputed tax liabilities. [Repealed.]
- § 55332. Settlement authority.
- § 55333. Release of levy.
- § 55333.5. Return of property.
- § 55334. Exemptions from levy.
- § 55335. Claim for reimbursement of bank charges by taxpayer.
- § 55336. Preliminary notice to taxpayers prior to lien.
- § 55337. Disregard by Board employee or officer.

**55321. Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

**55322. Taxpayers' Rights Advocate.** (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her



designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

**55323. Education and information program.** (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

(1) Taxpayers newly registered with the board.

(2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance of inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “and compliance” after “program for audit” in paragraph (4) of subdivision (b).

**55324. Annual hearing for taxpayers to propose law changes.** The board shall conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Fee Collection Procedures Law which may further improve voluntary compliance and the relationship between taxpayers and government.

**55325. Preparation of statements by Board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedure, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include this language for statements in the annual tax information bulletins that are mailed to taxpayers.



**55326. Limit on revenue collected or assessed.** (a) The amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

- (1) To evaluate individual officers or employees.
- (2) To impose or suggest production quotas or goals.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

**55327. Evaluation of employee's contact with taxpayers.** The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

**55328. Plan to timely resolve claims and petitions.** The board shall, in cooperation with the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases which take more time than the appropriate standard timeframe.

**55329. Procedures related to protest hearings.** Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

- (a) Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.
- (b) The conference may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.
- (c) The taxpayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

**55330. Reimbursement to taxpayer.** (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

- (1) The taxpayer files a claim for the fees and expenses with the board within one year of the date the decision of the board becomes final.
- (2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.
- (3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was found unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

History.—Stats. 1996, Ch. 1087 (SB 1827), in effect January 1, 1997, substituted “board” for “State Board of Control” after “expenses with the” in paragraph (1) of, substituted “decides” for “makes a recommendation to the State Board of Control” after “The board” in paragraph (3) of, and deleted “The State Board of Control concurs with the recommendation and orders the board to provide reimbursement of fees and expenses to the taxpayer.” as paragraph (4) of, subdivision (a), and added subdivision (d). Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “within one year . . . board becomes final” after “with the board” in paragraph (1) of, and substituted “in an amount . . . its sole discretion” for “which shall be determined by the board” after “to the hearing,” in paragraph (3) of, subdivision (a), substituted “board staff has . . . substantially justified” for “feepayer has established that the position of the board staff was not substantially justified” after “consider whether the” in subdivision (b), and added subdivision (e). Stats. 2000, Ch. 1052 (AB 2898), effective January 1, 2001, substituted “the notice of determination . . . claim for refund” for “filing petitions for . . . claims for refund” in paragraph (1) of subdivision (c).

**55331. Investigation for nontax administration purposes.** (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include hazardous substances tax violations.

(e) For the purposes of this section:

(1) “Investigation” means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) “Surveillance” means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

**55332. Settlement of disputed tax liabilities.** [Repealed by Stats. 1995, Ch. 497 (SB 722), in effect January 1, 1996.]

**55332. Settlement authority.** (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in

dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any fee matter in dispute.

(2) No recommendation of settlement shall be submitted to the board unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(c) Whenever a reduction of fees in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

- (1) The name or names of the feepayers who are parties to the settlement.
- (2) The total amount in dispute.
- (3) The amount agreed to pursuant to the settlement.
- (4) A summary of the reasons why the settlement is in the best interests of the State of California.
- (5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the feepayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement entered into pursuant to this section shall constitute confidential information for purposes of Section 55381.

(h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

History.—Added by Stats. 1995, Ch. 497 (SB 722), in effect January 1, 1996. Stats. 2003, Ch. 605 (SB 1060), in effect January 1, 2004, added “, for at least one year,” after “placed on file” to subdivision (c).

**55333. Release of levy.** (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event of any of the following:

(1) The expense of the sale process exceeds the liability for which the levy is made.

(2) The Taxpayers’ Rights Advocate orders the release of the levy or notice to withhold upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(b) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure.

(c) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

**55333.5. Return of property.** (a) Except in any case where the board finds collection of the fee to be in jeopardy, if any property has been levied

upon, the property or the proceeds from the sale of the property shall be returned to the fee payer if the board determines any one of the following:

- (1) The levy on the property was not in accordance with the law.
- (2) The fee payer has entered into and is in compliance with an installment payment agreement pursuant to Section 55209 to satisfy the fee liability for which the levy was imposed, unless that or another agreement allows for the levy.
- (3) The return of the property will facilitate the collection of the fee liability or will be in the best interest of the state and the fee payer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 55335.

*History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.*

**55334. Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

**55335. Claim for reimbursement of bank charges by taxpayer.** (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

- (1) The erroneous levy or notice to withhold was caused by board error.
- (2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

*History.—Stats. 2001, Ch. 543 (SB 1185), added "and any other . . . check charge fees" after "of bank charges" in subdivision (a), added "and third-party" prior to "charges include a" in subdivision (a), added "or third party's" after "a financial institution's" in subdivision (a), added "or third party" after "the financial institution" in subdivision (a), effective January 1, 2002.*

**55336. Preliminary notice to taxpayers prior to lien.** (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 55101) of Chapter 3.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but not later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, substituted “lien” for “loan” after “board releases a” in subdivision (a) and added subdivision (e).

**55337. Disregard by Board employee or officer.** (a) If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs, including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceedings, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connections with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

(d) Whenever it appears to the court that the taxpayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

#### CHAPTER 7. VIOLATIONS

§ 55361.	Criminal penalties.
§ 55362.	Penalties for other misconduct.
§ 55363.	Penalty for willful evasion or attempt to evade payment of fee.
§ 55364.	Penalty for misdemeanor violation.
§ 55365.	Statute of limitations.

**55361. Criminal penalties.** Any person who refuses to furnish any return or report required to be made, or who refuses to furnish a supplemental return or other data required by the board, is guilty of a misdemeanor and subject to a fine not to exceed five hundred dollars (\$500) for each offense.

**55362. Penalties for other misconduct.** Any person who knowingly or willfully files a false return or report with the board, and any person who refuses to permit the board or any of its authorized representatives to make any inspection or examination for which provision is made in this part, or who fails to keep any records prescribed by the board, or who fails to preserve the records for the inspection of the board for the time that the board deems necessary, or who alters, cancels, or obliterates entries in the records for the purpose of falsifying the records, is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000), by imprisonment in the county jail for not less than one month or more than six months, or by both.

**55363. Penalty for willful evasion or attempt to evade payment of fee.** Any person who willfully evades or attempts in any manner to evade or defeat the payment of the fee imposed by this part is guilty of a felony punishable by imprisonment in the state prison for 16 months, 2, or 3 years and a fine of not more than five thousand dollars (\$5,000).

**55364. Penalty for misdemeanor violation.** Every person convicted for a violation of any provision of this part for which another penalty or



punishment is not specifically provided for in this part is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500), by imprisonment in the county jail for not more than six months, or by both.

**55365. Statute of limitations.** Any prosecution for violation of any provision of this part shall be instituted within three years after the commission of the offense.

## CHAPTER 8. DISCLOSURE OF INFORMATION

### § 55381. Unauthorized disclosure of information.

**55381. Unauthorized disclosure of information.** (a) If the board collects a fee pursuant to this part on behalf of a state agency or pursuant to an interagency agreement with a state agency, or if the fee collected pursuant to this part is used to fund a program administered by a state agency, the board shall provide that state agency with any and all information obtained under this part relating to that fee.

(b) It shall be unlawful for the board, the state agency for which the board collects the fee, or any person having an administrative duty under this part to make known, in any manner whatsoever, the business affairs, operations, or any other information pertaining to a feepayer which was submitted to the board in a report or return required by this part, or to permit any report or copy thereof to be seen or examined by any person not expressly authorized by subdivision (a) and this subdivision. However, the Governor may, by general or special order, authorize examination of the records maintained by the board under this part by other state officers, by officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public.

(c) Notwithstanding subdivision (b), the successors, receivers, trustees, executors, administrators, assignees, and guarantors of a feepayer, if directly interested, may be given information regarding the determination of any unpaid fees or the amount of the fees, interest, or penalties required to be collected or assessed.

History.—Ch. 1113, Stats. 1993, in effect January 1, 1994, substituted “department” for “State Department of Health Services” after “part to the” in subdivision (a) and after “The” in subdivision (b); deleted “on the treatment, storage, or distribution of water” after “develop data” in subdivision (b); and added “of a feepayer” after “guarantors” in subdivision (d). Stats. 1995, Ch. 630, in effect January 1, 1996, substituted “If the board . . . to that fee.” for “The board shall provide any and all information obtained under this part to the department.” in subdivision (a); deleted former subdivision (b) which read: “The department and the board may utilize any information obtained pursuant to this part to develop data.”; relettered former subdivisions (c) and (d) as (b) and (c), respectively; added “the state agency . . . collects the fee” after “for the board,” in the first sentence of subdivision (b); and substituted “(b)” for “(c)” after “Notwithstanding subdivision” in subdivision (c).



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